

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4473 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

LAXMANBHAI PURSOTTAMBHAI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR. H.L. JANI, AGP for Respondent No. 1
MR. B.T. RAO, for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/09/98

ORAL JUDGEMENT

By way of this Special Civil Application the petitioner has challenged the order of detention dated 14.5.1998 passed by the District Magistrate, Ahmedabad, in exercise of power conferred by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. It is contended by the learned counsel that the petitioner submitted a

representation Annexure-C to the detaining authority to be forwarded to the State Government as well as to the Central Government. The detaining authority forwarded the same as late as 20.6.1998 which was received by the State Government on 23.6.1998 and rejected on 30.6.1998. However, the representation was not forwarded to the Central Government. Thus, the contention of the petitioner is that the detention deserves to be declared unconstitutional on this ground alone. It is further submitted that the wife of the petitioner had made a representation on 3.6.1998 which was received by the Central Government on 9.6.1998 as stated by Mr. P.R. Shukla, Dy. Secretary, Civil Supplies and Consumer Affairs Department in his affidavit. The say of the petitioner that in fact it was received on 4.6.1998. It is not necessary to enter into this controversy as it is not in dispute that the representation has not yet been decided. The learned A.G.P. says that the State Government had sent the comments to the Central Government on 26.5.1998. Be it as it may, no explanation is coming forward from the Central Government as to why the said representation has not yet been decided. Thus, the continued detention of the petitioner is in violation of Article 22(5) of the Constitution of India. Following the decision of the apex court in the case of HARISH PAHWA VS. STATE OF U.P. reported in AIR 1981 SC 1126 the detention of the petitioner deserves to be declared unconstitutional.

In view of the aforesaid, this Special Civil Application is allowed. The order of detention dated 14.5.1998 passed by the District Magistrate, Ahmedabad, is quashed and set aside. The petitioner shall be released forthwith if not required in any other case. Rule made absolute accordingly.